Donnalee Lozeau
MAYOR

August 15, 2013

Mr. Newton Tedder
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OEP06-4
Boston, MA 02109-3912

Re: **2013 Draft New Hampshire Small MS4 General Permit**
Comments from the City of Nashua

Dear Mr. Tedder:

The City of Nashua appreciates the opportunity to provide comments on the 2013 Draft New Hampshire Small MS4 General Permit that was published in the Federal Register on February 12, 2013. The City participated in the Public Meeting held in Merrimack on March 8, 2013 and attended and commented at the Public Hearing in Portsmouth on March 28, 2013. As you are aware, the City also submitted comments on the 2008 Draft New Hampshire Small MS4 General Permit. The City would like to acknowledge its sincere appreciation for granting the two extensions for the public comment period for the 2013 Draft MS4 General Permit. The extensions gave the City and other local communities in the region an opportunity to better understand the changes to the permit language and fully consider the implications to our community.

The City feels that it is important to note that we have made significant progress towards improving the water quality of receiving waters over the past decade through our MS4 compliance activities and the implementation of our comprehensive CSO control program. Our investment in water quality improvements has been in excess of $83 million dollars, including at least an estimated $7.5M for stormwater alone since 2003. Compliance with the 2013 Draft MS4 Permit is an additional significant effort that cannot be supported with the City's existing resources and funding within the next 5-year permit cycle as the permit requires. The City wishes to continue improving stormwater management and water quality, but this effort needs to take into consideration the progress currently being made and be balanced with future infrastructure demands and economic conditions.

We have provided background information below to provide some context for how the proposed permit will affect our community, followed by comments and feedback specific to the proposed Small MS4 General Permit.

BACKGROUND

The City of Nashua has been proactive in its efforts to reduce pollutants discharged into waterways through the implementation of our MS4 and Combined Sewer Overflow (CSO)

229 Main Street · PO Box 2019 · Nashua, NH 03061-2019
603.589.3260 · fax 603.594.3450 · NashuaMayor@NashuaNH.gov

programs. Approximately one quarter (25%) of the City's urban area is served by a combined storm drain and sanitary sewer system. In general, this results in the treatment of the "first flush" or 2-year storm event from the most developed area of the City. The City of Nashua is under an EPA Consent Decree (Civil Action No. 05-376-PB), dated December 26, 2005, to mitigate the impact of CSOs. CSOs have been identified as the most significant source for the *E. Coli* impairments within the reaches of the Nashua and Merrimack Rivers in the City. The City continues to complete projects related to the Consent Decree and reduce the occurrence of CSO events, and thus *E. Coli* being discharged into the waterways at the City's eight CSO locations. The City has nearly completed its $76 million CSO Program with final construction work being scheduled for completion in 2015 and post-construction monitoring for the CSO program will begin once the Draft 2010 Post-Construction Monitoring is approved by EPA. The City anticipates significant improvements in water quality once the CSO Program is fully implemented and these results will impact the City's approach to future stormwater management activities.

The City continues to implement its existing MS4 permit requirements and, as a member of the Nashua Area Stormwater Coalition, works with surrounding communities to celebrate successes and address stormwater management challenges. The following activities are examples of the City's efforts to improve water quality and comply with the existing MS4 permit:

- The City continues to install low impact development elements as part of redevelopment projects on municipal-owned properties in highly visible locations.
- The City owns in excess of 6,500 catch basins with over 380 outfalls in separated sections of the City and has identified suspicious and problematic outfalls for continued monitoring.
- The City has an online Customer Service request form to allow residents to notify the City of drainage issues or suspicious discharges.
- A "Paulie the Pickerel" logo has been adopted as part of the public education program with colorful markers attached to catch basins.
- Good housekeeping measures continue to reduce salt and sand applications, sweep miles of roadway focusing on urban areas, and clean catch basin in high priority areas.

We believe that as we continue to evaluate and improve on these measures, we will build on the planning and initial implementation investment made under the 2003 MS4 permit. This allows us to focus on high priority areas and BMPs for the best use of the City's funds. Additionally, these efforts need to consider the new requirements proposed under draft NPDES Permit No. NH0100170 for the City's CSO program and wastewater treatment plant (CSO and WWTP Permit) that was issued for public comment on July 23, 2013. Continuous improvements in all these areas are geared towards a better fulfillment of the new permit requirements and our ultimate goal of water quality improvements.

COMMENTS ON PROPOSED MS4 GENERAL PERMIT

We have reviewed the 2013 Draft New Hampshire Small MS4 General Permit, and are concerned that our next permit will require a significant increase in the level of effort beyond the current program without taking into account the water quality improvements and measuring the effectiveness of the efforts already implemented in both the Stormwater and CSO Programs. We understand it is challenging to create an effective regulatory program to address a watershed-based problem that is also economically feasible. However, it is

incumbent upon the EPA to make every effort to develop a reasonable program with set goals achievable through a reasonable use of City resources, which builds upon the investments and improvements in water quality already made.

Our comments are organized by major topic with specific reference to the Draft 2013 MS4 Permit and the City's specific request for EPA's response and/or modification to the permit.

Administration & Recordkeeping

1. *Part 1.7.2.d Notice of Intent* – "The NOI shall be submitted within 90 days of the effective date of the permit."

   Comment: The NOI requires a significant effort by the City and its stakeholders to develop and outline the City's 5-year program to meet the 2013 Draft Small MS4 General Permit, as written. The commitment to activities outlined in the NOI requires review and approval by multiple departments within the City and the authorization for funding needs to coincide with the City's budget cycle beginning July 1st. This effort cannot be effectively completed, reviewed and approved within such as short time frame. It is also more cost-effective to develop the NOI at the same time as the Stormwater Management Plan under Part 1.10 within one year of the effective date of the permit.

   Request: The City requests that the EPA extend the deadline for submitting the NOI to one year from the effective date of the permit to allow more efficient integration and coordination with the Stormwater Management Plan development and the City's budget cycle beginning July 1st.

2. *Part 1.10.c Stormwater Management Program (SWMP)* – "The permittee is encouraged to maintain an adequate funding source for implementation of this program."

   Comment: The increased level of effort to address water quality needs as required under the 2013 Draft Small MS4 General Permit should include Federal funding programs (e.g., grants, revolving loans, LID incentive programs, etc.). This is important not only for the ongoing evaluation of water quality issues and development of cost-effective solutions, but for the support of compliance implementation (construction). Many of the current water quality funding programs preclude NPDES Phase II planning and implementation activities or the revolving loan programs offer little incentive over the current bonding capacity of regulated communities. Additionally, the available funding through these programs in New Hampshire is very limited should additional MS4s seek assistance under competitive grant programs (e.g., s319 grants).

   Although the City continues to seek alternative funding in support of these efforts, currently the City optimizes the use of available funds by prioritizing BMPs and focusing on known areas of concern. The City proposes to continue prioritization of BMPs as part of our SWMP to best use available funds as we continue to seek adequate funding sources, but as noted above, we request that a more robust Federal funding program be available to the MS4 communities in New Hampshire to support this Federal mandate.

Request: The City requests that the EPA and/or NH DES provide meaningful financial assistance to regulated MS4s to meet the MS4 Permit and address water quality problems.

3. *Part 4.3.3* – "The permittee shall also include in the annual report results from any other stormwater or receiving water quality monitoring or studies conducted during the reporting period" conducted on behalf of the permittee or conducted by other entities and reported to the permittee."

   Comment: Monitoring required and reported to the EPA under separate permits or administrative consents should not be required in the MS4 Annual Report, unless it is directly related to the completion of BMPs and/or measurable goals identified in the MS4's SWMP.

   Request: Please provide justification and clearer direction on the information being requested in this part. The City suggests that EPA allow MS4s to reference other programs and/or permits that meet the objectives for data reporting to EPA. This allows the results from the CSO program to be included in a holistic approach for the City.

4. *Part 4.4.2.5* – "All outfall screening and monitoring data collected by or on behalf of the permittee during the reporting period and cumulative for the permit term" shall be included in the annual report.

   Comment: The information submitted with each annual report should be limited to the data collected during the reporting period. The intent of the annual report is to document new progress and it is an unnecessary administrative burden to continue reporting the cumulative data for the permit term with each annual report. This information will be tracked as part of the City's SWMP and made available to EPA upon request.

   Request: Please remove the requirement to submit the cumulative data for the permit term with each annual report.

Public Education

5. *Part 2.3.2.1.c.iv. Industrial Program* – "The permittee shall at minimum consider the following topics [including Industrial Program] when developing the outreach/education program."

   Comment: The City does not feel that the Industrial Program topic should be included in the MS4 Permit since private facilities are permitted separately under the NPDES Multi-Sector General Permit (MSGP), which is also within the EPA's jurisdiction. A municipal staff training program is already required under the MSGP and is implemented at MSGP-permitted municipal facilities.

   Request: Please remove the reference to the industrial program from this part of the permit.

Illicit Discharge Detection and Elimination (IDDE)

6. *Part 2.3.4.2.c – "The period between identification and elimination of an illicit discharge is not a grace period, and an illicit discharge to the MS4 remains a violation of the permit until eliminated."*

   Comment: The City recognizes and understands that the MS4 Permit does not authorize illicit discharges. However, the purpose of the IDDE program is to identify and remove these unauthorized discharges. As long as the City has an effective IDDE program in place pursuant to Part 2.3.4 with a reasonable schedule for the removal of identified illicit discharges, the presence of such discharges should not constitute an ongoing violation of the permit. It would be more appropriate to state that failure to effectively implement the IDDE program is a violation.

   Request: Please remove Parts 2.3.4.2.a and 2.3.4.2.c from the permit or revise these parts to rely upon the IDDE program to comply with the permit.

7. *Part 2.3.4.4 Sanitary Sewer Overflows* – This part and other references to Sanitary Sewer Overflows (SSOs) do not address operators of MS4s that are regulated under a CSO Program and an individual NPDES Permit.

   Comment: As discussed above, the City of Nashua has a CSO Program under an EPA Consent Decree and approximately 25% of the City's urban area is served by a combined storm drain and sanitary sewer system that discharges to the City's wastewater treatment plant at Sawmill Road. The service area for this combined system is excluded from the regulated area under the MS4 permit. Additionally, the MS4 permit should provide flexibility for the City to develop a program that addresses SSOs as part of its CSO & WWTP Permit. Activities proposed under the draft CSO & WWTP Permit, such as the "Collection System Operation and Maintenance Plan " (Part I.D.5), will assist in meeting the requirements related to SSOs. Reporting SSOs to two permit programs is an unnecessary administrative burden to the City.

   Request: The City requests that the EPA revise Part 2.3.4.4 to provide flexibility in meeting the requirements through other NPDES permits and related programs that adequately address SSOs. In some cases, the schedule for meeting these requirements will be based on the efforts to meet the CSO & WWTP Permit (No. NH0100170).

8. *Part 2.3.4.6 System Mapping* – "This revised map of the MS4 shall be completed within two (2) years of the effective date of this permit."

   Comment: The system mapping requirements and recommended elements under this part identify important storm drain and sanitary sewer system characteristics to be used to prioritize catchments for illicit discharge investigations. It is important to note that the EPA is already requesting that the City prepare a detailed map of the sanitary sewer system under the draft CSO & WWTP Permit (Part I.D.5.4) within 30 months of the effective date of this permit. The storm drain system mapping should be coordinated with this effort to allow a more integrated and cost effective approach to gathering the data.

   Request: The City requests that the EPA revise the schedule and allow at least 36 months for the development of the revised map to meet the requirements in Part 2.3.4. This will allow the City to develop an integrated mapping approach which will result in a more

effective Illicit Discharge Detection and Elimination Program, as well as provide critical information to address impaired waters under Part 2.2 of the draft MS4 Permit.

9. *Part 2.3.4.8* – "The written IDDE program shall be completed within one (1) year of the effective date of the permit."

   Comment: As discussed under Item 8 above, the mapping and assessment of data for the storm drain and sanitary sewer systems is essential to the IDDE program. Therefore, an updated written IDDE program should be completed on a schedule that integrates the system mapping requirements under Part 2.3.4.6 of the draft MS4 Permit and Part I.D.5.4 of CSO & WWTP Permit.

   Request: Please revise Part 2.3.4.8 to allow the City to meet an alternative schedule (e.g., 42 months) for the written IDDE program that builds upon the mapping efforts in Part 2.3.4.6 of the MS4 Permit and Part I.D.5.4 of the CSO & WWTP Permit.

10. *Part 2.3.4.8.c.i* – Excluded catchments are limited to those listed in the permit and do not consider any prior assessments completed under the 2003 MS4 permit.

    Comment: Over the past permit cycle the City has implemented an outfall monitoring program and completed screening, monitoring, and testing of outfalls. In numerous cases, there was no evidence of illicit discharges at these outfalls and this information should be considered when setting priorities for future assessments.

    Request: Please revise the permit to allow MS4s to identify additional excluded catchments and set priorities based on historic IDDE activities.

11. *Part 2.3.4.8.d.iii Dry Weather Screening and Sampling* – "When a flow is observed, a sample of the flow shall be collected and analyzed for the parameters listed in 2.3.4.8.d.v."

    Comment: The parameter list for dry weather monitoring should be specific to the outfall and receiving water body and not the generalized list in the permit. The flow should not be analyzed for all these parameters if the screening assessment does not indicate the potential pollutant. For example, if previous screening events and visual observation indicate that the flow is likely groundwater infiltration and the receiving water is impaired for pathogens, then the City should not be required to analyze for ammonia.

    Request: Please revise the permit to provide flexibility for MS4s to exclude unnecessary analytical parameters for dry weather flows based on the MS4's understanding of the drainage system, water quality issues, and past analytical data.

12. *Part 2.3.4.8.e.ii.b Wet Weather Investigation* – "The permittee shall conduct at least one wet weather screening and sampling at the outfall for any catchment where one or more System Vulnerability Factors are present."

    Comment: Wet weather sampling requirements for outfalls should be based on a holistic approach that considers the evaluation of catchments under Part 2.3.4.8.c and the requirements for discharges to impaired waters under Part 2.2. A more focused wet weather investigation program for priority catchments will result in better data to guide corrective actions to improve water quality.

Request: Please revise the permit to provide flexibility for MS4s to conduct wet weather investigations based on priority catchments identified under Part 2.3.4.8.c and the MS4's understanding of the drainage system and water quality issues.

13. *Part 2.3.4.8.f Removal and Confirmation* – "Within one year of removal of all identified illicit discharge and SSO sources, confirmatory outfall or interconnection screening shall be conducted."

    Part 2.3.4.8.g Follow-up Screening – "Upon completion of the catchment investigation . . . the catchment outfall or interconnection shall be scheduled for follow-up screening within five years . . ."

    Comment: These requirements are unnecessary and require MS4s to repeat the initial catchment screening and detailed investigation previously completed. These efforts will consume much needed resources that could otherwise be focused on high priority areas for the investigation and removal of other potential illicit discharges.

    Request: Please remove language from Part 2.3.4.8.f and all of Part 2.3.4.8.g from the permit and rely upon the documented IDDE investigations that result in the removal of illicit discharges.

14. *Part 2.3.4.9.a IDDE Program Implementation Goals and Milestones* – "The permittee shall complete dry weather screening and sampling (where flowing) of every MS4 outfall and interconnection (except Excluded and Problem Catchments) no later than three years from the permit effective date."

    Comment: Based on previous screening efforts and available resources, the City's program will be most effective if its limited resources are focused on high priority catchments only for dry weather screening. Low priority catchments should be investigated only if priority catchment investigations have not identified a probable or significant source(s) of the problem during the permit term.

    Request: Please remove the requirement to screen low priority catchments during the 5-year permit period.

15. *Part 2.3.4.9.c – IDDE Program Implementation Goals and Milestones* – "The permittee shall implement the Catchment Investigation Procedures in every catchment of the MS4, even where dry weather screening does not indicate evidence of illicit discharges."

    Comment: The City completed an initial screening of its outfalls under the 2003 MS4 Permit and has identified catchments that require additional monitoring and/or investigation. The ability to reduce the number of catchments for physical investigation by a clearly defined desktop screening process in accordance with Part 2.3.4.8.e.i. would focus the City's efforts and result in a more feasible and achievable goal.

    Request: Please remove the requirement to conduct catchment investigations in every catchment of the MS4, even where dry weather screening does not indicate evidence of illicit discharges. The IDDE program development, specifically the priority ranking of catchments based on detailed mapping information, is an appropriate screening tool

to focus the City's efforts on catchments where illicit discharges are most likely to be present.

Construction Site and Post-Construction Runoff Control

16. *Part 2.1.2 New or Increased Discharges* – This part holds the MS4 responsible for compliance with the NH antidegradation regulations.

    Comment: All development has an incremental impact to stormwater that is not fully mitigated through even the best management practices available. Therefore, 100% compliance with the antidegradation regulations cannot be guaranteed.

    Request: The City requests that the EPA require compliance with the antidegradation regulations to the Maximum Extent Practicable.

17. *Part 2.3.6.8.b Directly Connected Impervious Area* – "Within two (2) years of the effective date of this permit, the permittee shall complete an inventory and priority ranking of permittee-owned property and infrastructure that could be retrofitted with BMPs . . ."

    Comment: The City agrees that an inventory of infrastructure for potential BMP retrofits is a good approach to understand where to make improvements to mitigate the stormwater impacts associated with impervious areas. The City understands the need and continues to look for opportunities to install BMPs at its schools and municipally-owned properties. However, the mapping requirements in Part 2.3.4.6 of the MS4 Permit and Part I.D.5.4 of the CSO & WWTP Permit, as well as the efforts to develop WQRPs under Part 2.2.2 of the MS4 Permit, will guide and inform the need for BMP retrofits. Developing and evaluating this data will lead to a more focused effort to evaluate potential BMP retrofits and the schedule for the mapping and other data gathering does not coincide with the schedule outlined in this part of the permit.

    Request: Please revise the schedule under Part 2.3.6.8.b to allow sufficient time (i.e., Permit Year 4) to integrate the schedule for WQRP development under Part 2.2.2 of the permit.

Good Housekeeping and Pollution Prevention

18. *Part 2.3.7.1 Operations and Maintenance (O&M) Programs*

    Comment: The City encourages the EPA to more thoroughly review the economic impact and implementation timeframe proposed under the MS4 Permit. Many of the requirements outlined in the proposed permit represent an order of magnitude increase in effort to address municipal operations that is only preceded by the wastewater treatment initiatives of the 1970s, which was supported by a Federal funding program. Similar funding programs need to be developed to meet the objectives of the stormwater rules under the Clean Water Act since the proposed level of effort cannot be sustained locally. The City of Nashua wishes to enhance its O&M Program, but we have focused on priority areas to maximize the effectiveness of current resources and funding to address water quality concerns.

    For example, the City has documented at least 6,500 catch basins, 2,900 manholes, 380 outfalls, 253 culverts, and 43 public BMPs and therefore, over 10,000 storm drain system components that would need to be inspected and/or investigated under the new MS4

Permit. To meet the milestone of 100% inspected/investigated in a 5 year period, the City would need to inspect at least 8 structures per workday. Essentially, the City would need to hire multiple full-time positions within the next permit term just to do the inspections. This doesn't even include the cost of police details or the labor investment required to follow up on any findings or more detailed investigations. The City's current program consists of inspections completed by existing staff based on known problem areas and reports from citizens.

Consideration should be given to the fact that MS4 communities in NH lose three to four months a year to winter temperatures during which vacuum equipment cannot operate. Therefore, the annual workload needs to be accommodated within an approximate 8 month timeframe when resources are competing to operate and maintain other City infrastructure.

Request: Please revise Part 2.3.7.1 to allow MS4s to develop an economically feasible O&M program with a modest increase in effort focused on priority areas over the next 5-year permit cycle.

19. *Part 2.3.7.1.d.ii Third Bullet* – "Establish, for other catch basins, a schedule that the frequency of routine cleaning will ensure that no catch basin at anytime will be more than 50 percent full."

    Comment: The requirement to clean catch basins that are more than 50% full is first required in the first bullet of this part for catch basins draining to impaired waters where the pollutant of concern was sediment. Why prioritize catch basins in these impaired waters if the same requirement is going to be applied to all catch basins? Shouldn't there be more prioritization for cleaning requirements? It would be clearer if the guidance for catch basin cleaning in impaired watersheds (for sediment, nitrogen, or phosphorus) was in a separate part from the guidance for catch basin cleaning in all other areas.

    Due to the burden of ensuring that every catch basin does not exceed 50% full, the City is interested in first evaluating the inspection results from catchments to determine high priority cleaning areas and to develop an effective sediment loading projection program.

    Request: The City requests that the EPA allow MS4s to develop a prioritized cleaning schedule based on catchments that are known to contribute sediment to outfalls and not hold all catch basins to the same standard to not exceed 50% full. Additionally, the catch basin cleaning requirements specific to impaired watersheds should be outlined in a separate section of the permit.

20. *Part 2.3.7.d.vi* - "All permit-owned stormwater treatment structures (excluding catch basins) shall be inspected annually at a minimum."

    Comment: Being proactive, the City has installed a CDS unit, many Vortechnics, Stormceptors, hoods, and other BMPs throughout the City. The inspection frequency should not be set arbitrarily, but should be based on recommended industry best practice, manufacturer's recommendation, and inspection history.

Request: Please revise this part to allow the MS4 to set the appropriate inspection frequency for stormwater treatment structures. Additionally, the City requests that the EPA allow MS4s to develop a prioritized cleaning schedule for all BMPs.

Non-Numeric Effluent Limitations

21. *Part 2.1.1.a Requirement to Meet Water Quality Standards* – "Discharges shall not cause or contribute to an exceedance of applicable water quality standards (including numeric and narrative water quality criteria) for the receiving water."

    Comment: The reason for the permit is to develop procedures to ensure that stormwater discharges do not negatively impact receiving waters to the Maximum Extent Practicable. The language above should be clarified to reflect the intent of the permit process.

    Request: Revise this part of the permit to clarify that "Discharges shall not cause or contribute to an exceedance of applicable water quality standards (including numeric and narrative water quality criteria) for the receiving water **to the maximum extent practicable based on the measures outlined in the MS4's SWMP to meet Part 2.3 of the permit.**"

22. *Part 2.1.1.c* – " . . . within 60 days of becoming aware of the situation eliminate the conditions causing or contributing to an exceedance of water quality standards." and "Any discharge causing or contributing to an exceedance of applicable water quality standards violates Part 2.1.1.a of this permit and remains a violation until eliminated."

    Comment: The requirements in Part 2.3 of the permit, including the Water Quality Response Plan (WQRP) (Part 2.2.2.a.ii), adequately address discharges that are a concern to water quality. It is important to note that as part of the City's SWMP and/or future WQRPs, the reduction or elimination of all pollutants from all stormwater discharges may not be necessary to meet water quality standards. As written, this part implies that permittees will be in violation of the permit for discharges that are being addressed as part of a WQRP. In addition, 60 days may be an unrealistic time frame, depending upon the cause of the exceedence and time of year when the exceedence is discovered.

    Request: Remove Part 2.1.1.c from the permit and rely upon the requirements under Parts 2.2 and 2.3 to meet water quality standards.

Impaired Waters

23. *Part 2.2.2 Discharge to an Impaired Water without an Approved TMDL* – "Phase 1. Preliminary evaluation and source identification for MS4 discharges and identification of additional and/or modified BMPs to address the pollutant of concern ("Planned BMPs") – Part 2.2.2.a Phase 1 shall be completed 1 year from the effective date of the permit."

    Comment: In the City of Nashua, these requirements apply to the following water bodies for bacteria impairments:

    - Nashua River - Mine Falls Dam Pond
    - Lyle Reed Brook
    - Muddy Brook
    - Unnamed Brooks (2)

- Public Water Supply Ponds & Brooks

This phase requires the development of a Water Quality Response Plan (WQRP) in Year 1 for each impairment. For the City of Nashua, this phase would require the development of at least six WQRPs in one year based on the most recent 303(d) list. The City does not have the data or resources to develop these plans within the requested timeframe.

MS4s cannot identify and commit to stormwater BMP retrofits and other capital improvements without supporting data and a sound scientific approach to demonstrate that the proposed solutions will adequately address the problem. Without TMDL guidance, which would include potential source identification, it is unfair to place the burden on MS4s to evaluate all the EPA "presumed" list of numerous sources, especially when the City has not previously been required to evaluate them and has limited available data. The responsibility of developing a sound scientific approach and supporting data for remedial efforts has been pushed to MS4s with limited resources. The EPA should lead efforts to develop scientifically-supported data that will demonstrate the need for, and effectiveness of, stormwater BMPs before requiring such under the permit. In the absence of such support, the schedule for developing a WQRP(s) for impaired waters under the MS4 Permit should be extended.

Request: The City requests that the EPA extend the schedule to complete the WQRPs no earlier than Permit Year 4 to coincide with the completion of additional tasks under the new permit. For example, this includes the catchment assessments within the first 3 years of the MS4 permit and the sanitary sewer mapping efforts within the first 30 months of the CSO & WWTP Permit (refer to Items 8 and 9).

24. *Part 2.2.2.a.ii.(a) Water Quality Response Plan Discharge* – Additionally, the WQRP is supposed to identify ". . . additional or modified BMPs the permittee will implement to ensure it will not cause or contribute to the impairment."

Comment: BMP analysis, especially for structural BMPs with high capital costs, requires planning, modeling, design, and approval prior to implementation. This planning process cannot be completed within one year, especially when the evaluation of sources needs to be completed first. The EPA must understand that with the time constraint of 1 year, the WQRP can only include a conceptual approach with an initial assessment of capital improvements based on insufficient data. Any capital improvement planning would have to be approved at a later date.

Request: The City requests that the EPA revise this part of the permit to extend the timeframe for developing specific BMPs in the WQRP once sufficient data is available (refer to Item 23).

25. *Part 2.2.2.a.ii.(b).3. Water Quality Response Plan* – The WQRP requires a schedule from funding through implementation and evaluation, which must begin no later than 18 months after the permit effective date and be fully implemented within 3 years of the permit effective date, or 5 years for major projects. Non-structural BMPs are presumed feasible within two years.

Comment: The timeline for implementation of BMP retrofits is unreasonable based on the significant investment in planning, design, and construction needed. Given the

constraints and the lack of financial assistance to develop this program at the local level, the timeline for comprehensively addressing stormwater issues and water quality standards will be on the order of several decades, not several years. The BMP schedules should be specific to the proposed measure and order of magnitude cost to implement. For example, a modified public education program, since one is already on-going, is feasible within the established time frame. But another non-structural BMP such as more stringent development/ redevelopment requirements may require more than the presumed two years. Major projects should be given a longer timeframe to plan and implement based on a prioritized capital improvement plan.

The permit does not specify a schedule for EPA to review and approve the WQRPs, once submitted. The City cannot be expected to implement a program based on the WQRPs without formal approval, unless a presumptive approval is granted.

Request: The City requests that the EPA revise this part of the permit to extend the timeframe for implementation and evaluation of the WQRP to be begin in Year 5 of the permit. This will follow the proposed schedule for developing the WQRP in Permit Year 4, as requested under Item 23 above.

26. *Part 2.2.2.a.ii.(b) 4* – Include in the WQRP, "A description of the monitoring or other assessment and evaluation efforts that will be implemented to monitor, assess, or evaluate the effectiveness of the WQRP."

Comment: The City submitted a Combined Sewer Overflow Control Program Post Construction Monitoring Plan dated December 25, 2010 to EPA, as required under the Consent Decree (Civil Action No. 05-376-PB) dated December 26, 2005. To date, the City has not received any feedback from EPA on this monitoring plan and additional monitoring is proposed in the draft CSO & WWTP Permit. The City feels that this monitoring program is essential to evaluate the results of the improvements to address the impacts from CSOs and assist in evaluating water quality issues for the Merrimack and Nashua Rivers. The City of Nashua would like to build upon the monitoring efforts under the CSO program to meet the objectives for monitoring under the WQRP requirements in the draft MS4 Permit.

Request: The City requests that the EPA revise this part to allow MS4s to incorporate activities under other NPDES permits, as well as the schedule for meeting the WQRP monitoring requirements.

27. *Part 2.2.2.c.i. Reassessment of Implemented BMPs* – "Within four years of the permit effective date, the permittee shall reassess the implemented BMPs and the MS4's initial evaluation..."

Comment: The schedule for reassessing implemented BMPs needs to be extended based on the requested change to the schedule for development and implementation of the WQRPs discussed under Items 23-25 above.

Request: The City requests that the EPA revise the schedule for assessing the BMPs implemented under a WQRP to occur during the next permit cycle (i.e., after Permit Year 5).

28. *Part 2.2.2.c.ii. Prospective BMPs* – "For discharges identified... after the first year, the WQRP shall be completed within 180 days..."

Comment: The WQRP is intended to identify and prioritize BMPs to address the most significant contributors to water quality problems. It is unreasonable to require the City to develop a WQRP for specific discharges when these will be prioritized as part of the overall WQRP for each water body.

Request: Please remove this paragraph of Part 2.2.2.c.ii. Also, please note that the City is requesting removal of Part 2.1.1.c (refer to Item 22 above).

29. *Part 2.2.4. Discharges to Chloride-Impaired Waters* – "... the permittee shall meet the requirements set forth in Appendix H." From Appendix H: "... the permittee shall develop a Salt Reduction Plan that includes specific actions designed to achieve salt reduction on municipal roads and facilities, and on private facilities that drain to the MS4. The Salt Reduction Plan shall be completed within (3) years of the effective date of the permit ..."

Comment: It appears that the development and implementation of the Salt Reduction Plan under Part 2.2.4 of the permit is sufficient to meet the WQRP requirements under Part 2.2.2. However, the Salt Reduction Plan includes requirements for the City to address the use of salt on private properties. The City does not have the authority or resources to regulate this activity on private properties and this part of the permit places a significant burden on the City. It would be more appropriate for the City to incorporate public education for private properties into the Salt Reduction Plan.

Request: Please revise Part 2.2.4 of the permit to state that compliance with this part meets the requirements of Part 2.2.2. Please remove the requirements for privately maintained facilities that drain to the MS4 and regulate these properties as part of a statewide program that is administered and enforced by the EPA and/or NH DES. If the EPA wishes to incorporate requirements for privately maintained facilities as the MS4's responsibility, these requirements should be limited to public education.

TMDLs

30. *Part 2.2.1g. Discharges Subject to an Approved TMDL* – "The Year 5 annual report shall include a quantitative assessment of load reductions achieved through the implemented controls demonstrating that such reductions are consistent with the load reductions identified in the WLA..."

Comment: The EPA needs to provide guidance on calculating estimated load reductions for bacteria from structural and non-structural BMPs, such as education and housekeeping activities, similar to those provided in Appendix F for the phosphorus TMDLs. Otherwise, the quantitative assessment should be limited to the monitoring program to evaluate the water quality at receiving waters as a measure of load reduction. In addition, the eastern and northern political boundaries of Nashua are the approximate center line in waterways. The "Primary Town" is listed as only one community, even when the source of the pollutant in unknown. It is difficult for one community to address the "quantitative assessment of load reductions achieved through the implemented controls" when only one community on a shared waterway is implementing BMPs.

Request: Please revise Part 2.2.1.g to allow MS4s to meet the quantitative assessment requirements related to TMDLs through in-stream monitoring and not just load reductions. For example, this could also incorporate the strategy for meeting Part 2.2.2.a.ii.(b) 4, as discussed under Item 26 above. Also, please explain the "Primary Town" listing and the responsibility of an adjacent community on a shared impaired waterway.

31. *Appendix F, Bacteria TMDLs 3.ii. Good House Keeping (Part 2.3.7.1.d)* – "The permittee shall increase the frequency of street sweeping in areas that discharge to any waterbody with an approved bacteria TMDL to at least two times per year."

    Comment: Same as Item 19 regarding the requirements outlined in the proposed permit that represent an order of magnitude increase in effort to address municipal operations and lack of funding to support these requirements. The approach for street sweeping needs to be based on the watershed characteristics (e.g., land use, road lane miles) and what is necessary to reduce pollutant loads to these water bodies based on monitoring and/or WQRPs. Not all areas will require a sweeping frequency of two times per year and these resources could be better utilized to sweep other identified high priority areas.

    Request: Please remove the requirement to sweep at least two times per year in watersheds with an approved bacteria TMDL. The frequency for street sweeping should be based on the requirements outlined in Part 2.3.7.1.d.iii.

In closing, thank you for the opportunity to comment on the 2013 Draft New Hampshire Small MS4 General Permit and for your consideration of these comments as the permit is finalized. We hope that these comments and information are helpful in shaping the new MS4 Permit and the City respectfully requests a written response from EPA to each of the items in this letter.

The City feels we are proactive in our Stormwater Management Program and are sensitive to focusing on the high priority areas of the City. As the CSO Program continues to go forward and we continue to implement our Stormwater Management Plan under the MS4 Permit, we continue to move towards the mutual goal of improved water quality in our waterways. If you have any questions or wish to discuss this information, please feel free to contact our Public Works Director, Lisa Fauteux, by phone at 603-589-3140 or e-mail at FauteuxL@nashuanh.gov.

Respectfully,

Donnalee Lozeau

cc: Thelma Murphy, US EPA Region 1
Jeff Andrews, NHDES, Water Division
Richard Niles, Water Resources Project Manager, AMEC
Jean Haggerty, Associate Water Resources Planner, AMEC
Lisa Fauteux, Director, Public Works Division, City of Nashua
Stephen Dookran, P.E., City Engineer, City of Nashua